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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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Docket Nos. 15-0174 & 15-0175 AWA

ROMAN D. YODER, an individual;
and LEROY R. YODER, an individual,

Respondents.

DECISION AND ORDER BY ENTRY OF DEFAULT

I. PRELIMINARY STATEMENT

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(Act or AWA), by a complaint filed on September 3, 2015, by the Administrator of the Animal and Plant Health Inspection Service (APHIS)(Complainant), alleging that Roman D. Yoder and Leroy R. Yoder (Respondents) violated the Act and enabling regulations (Regulations).

II. PROCEDURAL HISTORY

On September 3, 2015, the Office of the Hearing Clerk for the Office of Administrative Law Judges sent a copy of the complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary (the Rules of Practice)(7 C.F.R. §§ 1.130-1.151) by certified and regular mail to each of the Respondents. Pursuant to United States Postal Service (USPS) records, the certified mail was delivered at 11:39 a.m., on September 11, 2015. (USPS receipts 70123460000338339899 (Roman D. Yoder); 70123460000338339905 (Leroy R. Yoder)). Neither Respondent filed an Answer.

By Order issued November 6, 2015, I directed Respondents to show cause why a Decision and Order by entry of default should not be issued. Neither Respondent responded to my Order. On November 20, 2015, Complainant filed a motion for the entry of default decision, which was

sent to Respondents by certified mail (Tracking Numbers 70031010000173672936 and 70031010000173672943). The online site for USPS documented that the notices of certified mail were left at Respondents' addresses. Neither Respondent filed a response to the motion.

III. AUTHORITIES

Pursuant to the Rules of Practice, a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules of Practice also provide that an Answer "shall . . . [c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent." 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such situation, default shall be appropriate. 7 C.F.R. § 1.136(c).

Additionally, the Rules of Practice prescribe that, when computing the time permitted for a party to file a document or other paper, Saturdays, Sundays, and Federal holidays are to be included except when the time expires on one of those days; should such situation occur, the time period shall be extended to include the next business day. 7 C.F.R. § 1.147(h). The Rules of Practice also state that a document sent by the Hearing Clerk "shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . ." 7 C.F.R. § 1.147(c)(1).

The Rules of Practice further provide that "[t]he failure to file an answer . . . shall constitute a waiver of the hearing. Upon such . . . failure to file, complainant shall file a proposed decision along...Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto." 7 C.F.R. § 1.139.

IV. DISCUSSION

Pursuant to section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)), Respondents

were required to file an answer within 20 days after service. The 20th day after service was October 1, 2015. Neither Respondent filed an answer by that date, or at all. The Rules of Practice further provide that "[t]he failure to file an answer ... shall constitute a waiver of the hearing. Upon such. . . failure to file, complainant shall file a proposed decision along... Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto." 7 C.F.R. § 1.139. Neither Respondent filed an objection to Complainant's motion for a Decision by means of default and admissions. Consequently, the material facts alleged in the complaint are all admitted by the respondents' failure to file an answer and are adopted and set forth herein as Findings of Fact and Conclusions of Law. This decision and order is issued pursuant to section 1.139 of the Rules of Practice.

V. FINDINGS OF FACT

1. Roman D. Yoder is an individual whose business mailing address is in Baltic, Ohio. At all times mentioned in the complaint, said Respondent was a dealer, as that term is defined in the Act and the Regulations and held AWA license number 31-A-0269 until May 1, 2014, when it expired for failure to renew.
2. Leroy R. Yoder is an individual whose business mailing address is in Baltic, Ohio. At all times mentioned in the complaint, said Respondent was a dealer, as that term is defined in the Act and the Regulations, and has never held an AWA license, but purported to be an owner of respondent Roman D. Yoder's animal business.
3. Respondent Roman D. Yoder reported to APHIS receipt of \$19,000 from the sale of 97 animals in 2010-2011, \$20,000 from the sale of 108 animals in 2011-2012, and \$14,415 from the sale of 78 animals in 2012-2013.
4. On April 4, 2011, APHIS issued an Official Warning (OH 11033) to Respondent

Roman D. Yoder with respect to three instances (January 7, 2011, October 7, 2010, and July 14, 2010) when Respondents failed to provide access to APHIS officials for inspection.

5. The complaint alleges numerous and repeated violations of the veterinary care, identification, and record-keeping Regulations, and continuing noncompliance with the minimum standards for dogs. The allegations span a three-year period.

6. The allegations set forth in the complaint are hereby adopted as proved, and incorporated herein.

VI. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Entry of Decision and Order on default is appropriate.
3. Respondents willfully and repeatedly violated the Act
4. Sanctions are appropriate for the willful and repeated violations of the AWA.
5. The number and severity of violations establish that Respondents are unfit to be licensed under the Act.

ORDER

1. Respondents Roman D. Yoder and Leroy R. Yoder, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.

2. Animal Welfare Act license 31-A-0269 is hereby revoked.

3. Respondents Roman D. Yoder and Leroy R. Yoder are jointly and severally assessed a civil penalty of \$32,250, which shall be payable to the Treasurer of the United States.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as

provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

Copies of this Decision and Order shall be sent to the parties by the Hearing Clerk.

So ORDERED this 11th day of February, 2016, in Washington, D.C.



Jenice K. Bullard
Administrative Law Judge